



Item 3  
(July 22, 2008 meeting)

**STAFF DRAFT (7.15.08)**

**ADVISORY OPINION 08-XX**

Interpretation of T.C.A. § 3-6-301(11) with respect to whether an state official whose registration fee for a conference or educational seminar is waived by an employer of a lobbyist may receive refreshments incidental to the conference or educational seminar if these refreshments are included in the registration fee.

Requestor: Tina G. Miller, General Counsel, Tennessee Department of Financial Institutions.

**QUESTIONS**

Does the Ethics Reform Act of 2006 (“Act”) prohibit Officials in the Executive Branch or Officials in the Legislative Branch (“State Officials”) from accepting meals, refreshments, or snacks at a conference or seminar where these items are paid for by an employer of a lobbyist (“Employer”), and the employer waives the conference registration fee?

**ANSWER**

The waiver of a registration fee for a conference or educational seminar is not a gift.<sup>1</sup> If the fee includes the cost of meals, refreshments, or snacks provided to the registered attendee in connection with a bona fide conference or educational seminar, then such meals, refreshments, or snacks are also not gifts. To the extent that the fee does not include the cost of meals, refreshments, or snacks, the Act prohibits the State Official from accepting such items, unless the State Official pays the fair market value for these items, or unless an exception to the gift ban applies.

**ANALYSIS**

The Act provides, in part, “an official in the executive branch, or the immediate family of such a candidate or official, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist.”<sup>2</sup> For the prohibition to apply, the person receiving must be a State Official, the person giving must be an Employer or lobbyist, and the thing given or received must fall within the definition of “gift.”

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<sup>1</sup> Tenn. Code Ann. § 3-6-301(11). Ms. Miller’s question inquires only with regard to receptions, continental breakfasts, snacks, and meals “included within the price of the conference.” As she asked, “[p]lease confirm that an employee of the Department can accept refreshments at an out of state conference, seminar or convention when refreshments are included in the cost of the conference and an employer of a lobbyist waives the conference fee.” Though the question was not asked, it is worthwhile to note that the Employer could also provide the State Official with items falling within the definition of “gift,” so long as those gifts fell within an exception to the gift ban.

<sup>2</sup> Tenn. Code Ann. § 3-6-305(a).

**TENNESSEE ETHICS COMMISSION**  
**ADVISORY OPINION 08-XX**  
**July XXX, 2008**  
**Page 2 of 4**

Tenn. Code Ann. § 3-6-301(20) defines “Official in the Executive Branch” as “the governor, any member of the governor's staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee Regulatory Authority, or any member or employee of any executive department or agency or other state body in the executive branch.”

The Department of Financial Institutions (“Department”) is located within the executive branch. Department employees are thus executive branch employees. As executive branch employees, Department employees are State Officials and subject to the gift prohibition. The Department’s general counsel informs the Commission that many of the various trade organizations which sponsor the educational conferences in question are Employers. As Employers, the trade organizations would also be subject to the gift prohibition.

Tenn. Code Ann. § 3-6-301(11) defines “gift” as, in part, “any payment, honorarium, subscription, loan, advance, forbearance, rendering, or deposit of money or services, unless consideration of equal or greater value is received.” However, the statute specifically provides that “‘gift’ does not include the waiver of a registration fee for a conference or educational seminar.” As the definition of “gift” explicitly excludes an Employer’s waiver of a conference or educational seminar registration fee, a State Official may accept such a waiver.

The question then becomes whether the meal is included within the “waiver” of the “registration fee” for the conference or educational seminar. In other words, what did the legislature intend a State Official to receive in stating that the definition of “gift” did not include a registration fee for a conference or educational seminar?

Statutory interpretation in Tennessee usually begins with an examination of “the natural and ordinary meaning of the statutory language.”<sup>3</sup> The Commission thus turns to the “commonly accepted meaning” of the words “registration fee” to determine what is normally included in the waiver of such a fee.<sup>4</sup> However, as the dictionary definitions shed no light on whether waiver of a conference “registration fee” would necessarily include waiver of meals provided to conference attendees, we turn next to contemporary usage.<sup>5</sup>

Contemporary usage of these terms, in the context of conferences, does shed light on the commonly accepted meaning. The Tennessee Arts Commission (“TAC”), for example, recently held the “Talk to Me, Tennessee Conference: A Statewide Conversation about the Arts.”<sup>6</sup> TAC’s recent conference had a registration fee of forty dollars (\$40.00) per day. According to

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<sup>3</sup> *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000).

<sup>4</sup> The words utilized in a statute must be given their ordinary, commonly accepted meanings. *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 735 (Tenn.App.1989).

<sup>5</sup> “Registration” is defined by the dictionary as the act of registering. “Register,” used as a verb, is defined as “to place or cause placement of one’s name in a register.” “Register” as a noun is defined as “a formal or official recording of items, names, or actions.”

<sup>6</sup> [http://www.arts.state.tn.us/ttmt\\_conference.htm](http://www.arts.state.tn.us/ttmt_conference.htm) (last visited May 19, 2008).

**TENNESSEE ETHICS COMMISSION**  
**ADVISORY OPINION 08-XX**  
**July XXX, 2008**  
**Page 3 of 4**

the TAC website, payment of this conference “registration” allowed an individual to receive the following: a light breakfast, presentations, breaks, panel discussions, workshops, entertainment, and lunch, but not dinner.<sup>7</sup>

Likewise, the Tennessee Department of Environment and Conservation’s recent two (2) day Governor’s Conference on Biofuels had a conference “registration fee” of two hundred dollars (\$200). Payment of this registration fee allowed an individual to receive the following: receptions, breakfasts, seminars, presentations, lunches, panel discussions, breaks, and one (1) dinner.<sup>8</sup>

Other surveyed state agencies’ conferences and educational seminars were similar in that payment of the registration fee allowed an individual to hear seminars, panel discussions, speakers, presentations, to participate in other educational activities, and to receive some meals. These meals usually included breakfast, lunch, snacks, and beverages, and occasionally included dinner and entertainment.

It appears that in common usage, payment of a conference “registration fee” often entitles the State Official for whom the fee is paid to receive food in connection with attending the conference.<sup>9</sup> The meals give State Officials opportunities to socialize with other conference attendees. By paying the travel and lodging costs, the state has recognized the value of the informal contacts developed by such interactions. This practice is of long standing and the General Assembly was aware of it when passing the Act.

Thus, the Act does not prohibit State Officials, in attending a qualified conference or educational seminar pursuant to a waiver of a registration fee under Tenn. Code Ann. § 3-6-301(11), from accepting whatever food is offered or provided to all persons who have registered and paid to attend the conference. Since such food is provided as a consequence of the registration fee payment, the food is not a “gift.”

There is, therefore, no fifty-one dollar (\$51.00) per person limitation attached to any of the conference meals.<sup>10</sup> It is not necessary for the State Official or the Department to reimburse

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<sup>7</sup> Dinner, unlike lunch, did not appear to be included in the conference fee, and it was unclear from the schedule whether the breaks included food. [http://www.arts.state.tn.us/tmt\\_conference.htm](http://www.arts.state.tn.us/tmt_conference.htm) (last visited May 19, 2008).

<sup>8</sup> <http://www.tennessee.gov/environment/altfuels/conference/agenda.shtml> (last viewed May 19, 2008).

<sup>9</sup> If the meals, snacks, receptions and food were not included as a part of the registration fee, they would not fall under the exception.

<sup>10</sup> Even if the conference meals were considered a “gift,” the fifty-one dollar (\$51.00) limitation would not necessarily apply. The fifty-one dollar (\$51.00) meal limitation is not absolute. Only meals and events falling under the exceptions to the gift ban found in Tenn. Code Ann. § 3-6-205(b)(8) through (10) require the meal, entertainment, or other activity to fall within a fifty-one dollar (\$51.00) limit. Food provided as part of a conference sponsored by an established and recognized organization of elected or appointed state government officials, for example, is not subject to the fifty-one dollar (\$51.00) limit. Tenn. Code Ann. § 3-6-305(b)(7)(B).

**TENNESSEE ETHICS COMMISSION**  
**ADVISORY OPINION 08-XX**  
**July XXX, 2008**  
**Page 4 of 4**

the conference sponsor<sup>11</sup> if the value of a particular meal or reception exceeds fifty-one dollars (\$51.00) per person.

This exception only covers meals or other benefits that are offered or provided to all persons who have registered. If a State Official wishes to accept meals or other benefits that are not offered or provided to all who have registered, the State Official would have to pay for the value of the meal or other benefit, unless the meal or other benefit fell within an exception to the gift ban.

Donald Hall, Chairman  
Dianne Ferrell Neal  
R. Larry Brown  
Thomas J. Garland  
Linda Whitlow Knight, Esq.  
Benjamin S. Purser, Jr.,  
Commissioners

Date: XXXXXXXXXX

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<sup>11</sup> Ms. Miller's request notes that the Department has been reimbursing the trade organization sponsoring the conference, if any meal or reception exceeds fifty-one dollars (\$51.00).